115年專門職業及技術人員高等考試會計師、不動產估價師、專利師、民間之公證人、植物診療師考試試題

代號：70150
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70650
頁次：6－1

等　　別：高等考試
類　　科：專利師(選試專業英文及工程力學)、專利師(選試專業英文及生物技術)、專利師(選試專業英文及電子學)、專利師(選試專業英文及物理化學)、專利師(選試專業英文及工業設計)、專利師(選試專業英文及計算機結構)
科　　目：專業英文
考試時間：2小時　　座號：_____

※注意：禁止使用電子計算器。

甲、申論題部分：（50分）
㈠請以英文作答，不必抄題，作答時請將試題題號及答案依照順序寫在申論試卷上，於本試題上作答者，不予計分。
㈡請以藍、黑色鋼筆或原子筆在申論試卷上作答。

一、Answer the following questions in English:
㈠ What is the meaning of the term "printed publication" in the context of novelty?（10 分）
㈡ What is the meaning of the term "estoppel" (prosecution history estoppel) in patent law?（15 分）

二、Translate the following extract from a decision by the Supreme Administrative Court into English:（25 分）
專利進步性之審查，涉及技術內容之比對。舉發人所提之舉發理由，應配合舉發聲明中所主張應撤銷專利權之請求項次，逐項論述各請求項技術特徵與各舉發證據技術內容的對應關係與比對結果，就請求項解決之問題、技術手段、及其達成之功效說明其係可輕易完成之理由。

乙、測驗題部分：（50分）　　代號：5701
㈠本試題為單一選擇題，請選出一個正確或最適當答案。
㈡共25題，每題2分，須用2B鉛筆在試卡上依題號清楚劃記，於本試題或申論試卷上作答者，不予計分。

1 According to the R.O.C. Patent Act, a person shall not be entitled to a patent if the claimed invention was described in the specification, claims or drawings of a patent issued or an application for invention or utility model patent published, in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention. However, this shall not apply where the applicant of the later-filed patent application is also the applicant of the earlier-filed patent application for invention or utility model. Which of the following concepts does not cover what is described in this provision?
㈠ Deemed as lack of novelty　　㈡ Deemed Loss of Novelty
㈢ Lack of novelty based on legal fiction　　㈣ Lack of novelty based on presumption

2 Paragraph 3 of Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides: "Members may also exclude from patentability: .... (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective _____system or by any combination thereof…"

(A) *Erga omnes* (B) *Sui generis* (C) *Bona fides* (D) *Prima facie*

3 Under the R.O.C. Patent Act, which of the following patent categories has primary protection on a creation made in respect of the shape, pattern, color, or any combination thereof, of an article as a whole or in part by visual appeal?

(A) Invention patent (B) Utility model patent (C) Design patent (D) Art patent

4 According to Article 48-9 of the R.O.C. Pharmaceutical Affair Act, the applicant for a generic drug license shall, with respect to the patent(s) of the approved new drug listed by the said new drug license holder, declare one of the four item(s) in the article when applying for a generic drug license. Which of the following is not a listed item in such article?

(A) No patent information on said new drug has been listed.

(B) The patent(s) corresponding to said new drug has been extinguished.

(C) The central competent health authority will issue the generic drug license after the patent(s) corresponding to said new drug are extinguished.

(D) The patent(s) corresponding to said new drugs shall be revoked, or the patent(s) corresponding to the generic drug subject to the application for drug license will not be infringed by said new drugs.

5 Article 13 of the R.O.C. Patent Act provides: "Where the right to apply for a patent is jointly owned, ①….Where one of the owners of the right to apply for a patent abandons his/her own share, ②"

(A)①each co-owner may freely dispose of his own share.
②this share shall be assigned to the National Treasury.

(B)①each co-owner may freely dispose of his own share.
②this share shall be vested in the other joint owner(s).

(C)①the right to apply for the patent shall not be assigned or abandoned without the consent of all joint owners.
②this share shall be assigned to the National Treasury.

(D)①the right to apply for the patent shall not be assigned or abandoned without the consent of all joint owners.
②this share shall be vested in the other joint owner(s).

6 Paragraph 1 of Article 97 of the R.O.C. Patent Act provides: "The damages claimed pursuant to the preceding article may be calculated according to any of the following methods: . . .3. the amount calculated on the basis of reasonable _____ that may be collected from exploiting the invention patent being licensed."

(A) realties (B) royalties (C) commissions (D) concessions

7 Under the R.O.C. Patent Act, which of the following descriptions is incorrect?
(A) Where an invention is made by an employee in the course of performing his duties, the right to apply for a patent and the patent right thereof shall be vested in his employer and the employer shall pay the employee reasonable remuneration; where there is an agreement providing otherwise, such agreement shall prevail.
(B) Where a fund provider appoints another party to conduct research and development, the ownership of the right to apply for a patent and the patent right in connection with the outcome of such research and development shall be vested in the party as mutually agreed upon in an agreement between both parties, or such rights shall be vested in the fund provider in the absence of such agreement.
(C) Where the ownership of the right to apply for a patent and the patent right are vested in the employer or the fund provider pursuant to Paragraph 1 or Paragraph 3 of Article 7 of the R.O.C. Patent Law, the inventor concerned shall be entitled to have his name shown as such.
(D) Where an invention made by an employee has no connection to the course of performing his duties, the right to apply for a patent and the patent right for such invention shall be vested in the employee.

8 According to the R.O.C. Patent Act, which of the following is not a condition under which any person may request an invalidation action against an invention patent with the Specific Patent Agency?
(A) The description does not fully disclose the invention in a manner that is clear and sufficient for it to be understood and carried out by a person having ordinary skill in the art.
(B) The Chinese translation submitted pursuant to Paragraph 3 of Article 25 extends beyond the scope of content disclosed in the original foreign language documents as filed.
(C) A post-grant amendment substantially enlarges or alters the scope of the claim(s) as published.
(D) The inventor’s right to be indicated as such is infringed.

9 Under the R.O.C. Patent Act, which of the following conditions does not limit the exclusive rights of patents?
(A) Acts done privately and for non-commercial purposes.
(B) Research and trials for the purpose of obtaining registration and market approval of drugs under the Pharmaceutical Affairs Act.
(C) Producing devices for preparing of medicines in accordance with a prescription from a physician.
(D) Where, after the sale of a patented product made by the patentee or made under consent of the patentee, using or reselling such product.

10 Under the R.O.C. Patent Act, which of the following descriptions regarding utility model patent is incorrect?
(A)"Utility model" means the conception of technical ideas relating to the shape or structure of an article or combination of articles or processes, utilizing the laws of nature.
(B) The term of a utility model patent shall expire after a period of ten years starting from the filing date.
(C) When exercising a utility model patent, the patentee shall not make a warning without presenting the technical evaluation report of the utility model patent.
(D) Where a utility model patent is revoked, the patentee shall be liable for the damages suffered by another person due to the patentee’s exercise of utility model patent right prior to its revocation. The above shall not apply if such exercise is based on the content of the technical evaluation report of utility model patent and carried out with due care.

11 Company X files a patent infringement action against Company Y before the Intellectual Property and Commercial Court of Taiwan.
In response, Company Y asserts that the asserted patent is invalid and presents prior-art evidence. During the litigation, Company X files a post-grant amendment application with the Taiwan Intellectual Property Office (TIPO), and the amendment proceeding remains pending.
Under the R.O.C. Intellectual Property Case Adjudication Act, which of the following statements is MOST accurate?
(A) The court must stay the infringement action until TIPO and all subsequent administrative appeal proceedings regarding the amendment become final.
(B) The court may not determine whether the patent has grounds for invalidation because such issues fall exclusively within TIPO's jurisdiction.
(C) The court may independently determine whether the patent has grounds for invalidation and may consider the potential effect of the pending amendment without necessarily waiting for TIPO's final decision.
(D) The court may determine patent validity, but it is prohibited from considering any amendment that has not yet been approved by TIPO.

12 Under the R.O.C. Patent Act, if a patentee wishes to amend the scope of claims after the grant of the patent, which of the following conditions must be satisfied for the amendment to be legally permissible?
(A) The amendment may broaden the scope of claims as long as it is within one year after grant.
(B) The amendment is allowed only if the patentee pays an additional annuity fee within six months of the amendment request.
(C) The amendment must not substantially enlarge or alter the scope of the claims, and must comply with the requirements of clarity and support by the specification.
(D) The amendment can freely introduce new technical features not disclosed in the original specification, provided they improve industrial applicability.

13 A patentee holds a valid patent for a chemical formulation requiring the use of "alkaline earth metal" as a core stabilizing element. A competitor later manufactures a competing product substituting the "alkaline earth metal" with a specific silicate compound. Compared with the patent concerned, while the product does not fall within the literal scope, it functions substantively the same, known to a skilled person at the time of infringement. Under Taiwan's patent infringement assessment guidelines, which legal framework should the court invoke to determine whether infringement is established?
(A) The Prosecution History Estoppel
(B) The Compulsory Licensing Provisions to permit third-party usage based on public interest.
(C) The Literal Infringement Test to confirm absolute textual identity between the claim and the accused product.
(D) The Doctrine of Equivalents to prevent the competitor from avoiding liability through insubstantial variations.

14 Which of the following is NOT a characteristic of patent rights?
(A) Territoriality (B) Exclusivity (C) Perpetuity (D) Transferability

15 Which of the following best describes the purpose of the Bolar Exception in patent law?
(A) To allow competitors to manufacture and commercially sell patented products before the patent expires.
(B) To permit activities necessary for obtaining regulatory approval of a product before patent expiration.
(C) To grant an automatic extension of the patent term for pharmaceutical inventions.
(D) To exempt universities from liability for all forms of patent infringement.

16 Under Taiwan patent practice, a divisional application is generally permissible only when:
(A) The parent application has already matured into a patent right.
(B) The parent application remains procedurally pending and the statutory requirements for division are satisfied.
(C) The applicant intends to extend the patent term of the parent application.
(D) The parent application has been finally rejected and all remedies have been exhausted.

17 In a patent infringement action before the Intellectual Property and Commercial Court, a Technical Examination Officer (TEO) prepares a technical report to assist the court in understanding the technology at issue. Which of the following statements is most accurate under R.O.C.'s Intellectual Property Case Adjudication Act?
(A) The court may rely on the TEO's report as binding expert evidence without disclosing it to the parties.
(B) The TEO may independently determine whether the patent is valid and issue a decision binding on the court.
(C) The parties must be given an opportunity to review and respond to the TEO's opinions before the court relies upon them.
(D) The TEO serves as a court-appointed expert witness and may be cross-examined in the same manner as a witness.

18 The extension of Taiwan's design patent term from 12 years to 15 years was primarily intended to:
(A) Provide design patents with protection equivalent to copyright protection.
(B) Align Taiwan's system with international trends and enhance protection for design-intensive industries.
(C) Eliminate the need for substantive examination of design patents.
(D) Permit perpetual protection for industrial designs.

19 One of the fundamental policy objectives of the patent system under the R.O.C. Patent Act is to balance private incentives and public interest. This objective is primarily achieved by:
(A) Granting exclusive rights for a limited period in exchange for public disclosure of the invention.
(B) Allowing patent owners to maintain technical information as trade secrets indefinitely.
(C) Eliminating disclosure requirements once a patent is granted.
(D) Extending patent protection whenever commercial success is demonstrated.

20 Under the R.O.C. Patent Act, the protection of design patents was expanded to cover certain digital image designs. Which of the following statements is most accurate?
(A) Design patents protect only designs embodied in physical articles.
(B) Digital image designs cannot be enforced against online infringement.
(C) Design patents may protect qualifying digital image designs even when not permanently embodied in a physical product.
(D) Digital image designs are subject to a shorter patent term than other design patents.

21 Under the R.O.C. Patent Act, which of the following subject matters would generally be eligible for an invention patent but not for a utility model patent?
(A) A reinforced structure of a folding ladder.
(B) A manufacturing process for producing semiconductor wafers.
(C) A new configuration of components in a mechanical hand tool.
(D) An improved shock-absorbing structure for a bicycle saddle.

22 Which of the following statements best distinguishes the functions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Patent Cooperation Treaty (PCT)?
(A) The TRIPS Agreement establishes minimum standards for intellectual property protection, while the PCT provides a unified filing procedure for seeking patent protection in multiple jurisdictions.
(B) The TRIPS Agreement allows applicants to obtain a worldwide patent, while the PCT establishes minimum patentability standards for member states.
(C) Both the TRIPS Agreement and the PCT automatically grant patent rights in all contracting states.
(D) Both the TRIPS Agreement and the PCT primarily govern patent infringement litigation and remedies.

23 Under the doctrine of patent exhaustion as recognized in Taiwan, which of the following statements is most accurate regarding parallel importation of patented products?
(A) Parallel importation always constitutes patent infringement because the products were imported without the patentee's consent in Taiwan.
(B) Parallel importation is prohibited unless the importer obtains a compulsory license.
(C) Parallel importation is permitted only after the patent has expired.
(D) Parallel importation is generally permitted when the patented products were lawfully placed on the market by the patentee or with the patentee's authorization.

24 In a patent infringement lawsuit governed by the R.O.C. Intellectual Property Case Adjudication Act, the plaintiff (patentee) requests the court to discover evidence hidden within the defendant's premises. The court decides to appoint an independent expert to conduct an on-site investigation. Which of the following terms correctly identifies this specialized role?
(A) Technical Examination Officer
(B) Verifier
(C) Patent Examiner
(D) Expert Witness

25 Under the R.O.C. Intellectual Property Case Adjudication Act, a party files a patent infringement action before the Intellectual Property and Commercial Court without appointing an attorney in a proceeding subject to compulsory legal representation. What is the most appropriate procedural consequence?
(A) The court must immediately dismiss the action with prejudice.
(B) The court must proceed with the case because patent litigation is exempt from compulsory representation requirements.
(C) The court may order the party to appoint qualified legal counsel within a specified period, and procedural defects may result if the order is not complied with.
(D) The opposing party automatically loses the right to challenge representation defects.